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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 708.

THE UNITED STATES, APPELLANT,

vs.

CONRAD S. BABCOCK.

APPEAL FROM THE COURT OF CLAIMS.

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I. Petition.**In the Court of Claims.****No. 32586.****CONRAD S. BABCOCK****v.****THE UNITED STATES.****Petition.**

(Filed August 29, 1913.)

To the Honorable the Court of Claims:

The claimant aforesaid respectfully represents:

I. That he was at the time of the loss hereinafter set forth, a captain, First Cavalry, U. S. Army, in the military service of the United States and was a mounted officer and, under the regulations, was required to keep and did keep a horse for use in the military service, of the value of \$300.

II. That while on duty in the service as aforesaid, claimant 2 sustained damage, without any fault or negligence on his part, by the loss of said horse in military service and by reason of an exigency or necessity thereof, under the following circumstances:

Said horse died at the Presidio of San Francisco, California, in July, 1910, of indigestion caused by eating the government ration of oats and barley fed him at that post.

III. That claimant claims reimbursement for said loss in accordance with Act of March 3, 1885 (27 Stat. L. 350), and Section 3482, Revised Statutes, as amended by the act of June 22, 1874 (1 Supp. R. S. 37); that this claim has been presented to the War or Treasury Department but not allowed because of the decision of the Comptroller of the Treasury, holding that such claims are barred.

IV. That no other action than as aforesaid has been had on this claim in Congress or by any of the Departments; that the claimant is the sole owner of this claim and the only person interested therein; that no assignment or transfer of this claim, or any part thereof 3 or interest therein, has been made; that the claimant is justly entitled to the amount claimed from the United States, after allowing all just credits and offsets; that the claimant is a citizen of the United States. And the claimant believes the facts as stated in this petition to be true.

And the claimant prays judgment for \$300.

KING & KING,
Attorneys of Record.

DISTRICT OF COLUMBIA, &c:

Archibald King, being duly sworn, deposes and says that he is one of the attorneys for the claimant; that he has read the above petition; and that the matters therein stated are true to the best of his information and belief.

ARCHIBALD KING.

4 Subscribed and sworn to before me this 28th day of August, 1913.

[SEAL.]

MARIE A. SEARLES,
Notary Public.

5

II. *General Traverse.*

Court of Claims.

No. 32586.

CONRAD S. BABCOCK

vs.

THE UNITED STATES.

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

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III. *History of Proceedings.*

In the Court of Claims.

No. 32586.

CONRAD S. BABCOCK

v.

THE UNITED STATES.

This case was argued and submitted on April 12, 1917.

On April 30, 1917, judgment for claimant was entered, amount to be suspended until the coming in of reply of War Department.

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IV. Argument and Submission.

In the Court of Claims.

No. 32586.

CONRAD S. BABCOCK

v.

THE UNITED STATES.

This case was reargued and submitted on the 8th day of January, 1918, by Mr. William B. King for the claimant, and Mr. George M. Anderson for the Defendants.

8 *V. History of Further Proceedings.*

On January 21, 1918 the court filed conclusion of law and entered judgment for plaintiff in the sum of \$200.00.

On March 7, 1918 the defendants filed a motion for findings of fact.

On March 11, 1918 the defendants' motion for findings of fact was allowed and findings of fact were filed.

On March 14, 1918 the claimant filed a motion for a new trial—being a motion for an additional finding. This motion was submitted to the court on March 15, 1918.

On this motion the court, on March 18, 1918, made the following order:

Allowed in part and overruled in part. Former findings withdrawn, and new findings this day filed. Judgment to stand.

These findings of fact and conclusion of law are as follows:

9 *VI. Findings of Fact and Conclusion of Law.*

Filed March 18, 1918.

Court of Claims of the United States.

No. 32586.

CONRAD S. BABCOCK

v.

THE UNITED STATES.

This case having been heard by the Court of Claims the court, upon the evidence, makes the following

Findings of Fact.**I.**

At the time of the loss hereinafter set forth the plaintiff, Conrad S. Babcock, was a captain in the First Cavalry, United States Army, a mounted officer.

II.

In July 1910 while plaintiff was on duty at the Presidio of San Francisco, Calif., he had in the military service there a bay gelding.

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III.

Said horse was lost in the military service aforesaid under the following circumstances:

The Government furnished as the forage ration barley with the awns on it and the horse died of strangulation of the intestines from eating such forage at said place. The loss was without fault or negligence on the part of the plaintiff.

IV.

A claim was filed in the office of the Auditor for the War Department on November 26, 1910, and was disallowed on July 19, 1911, on the ground that "as the death of officer's horse was not caused by any exigency of the service, nor from a cause incident to or produced by the military service, but was the result of a disease to which all horses are subject, no reimbursement can be made under the act of March 3, 1885."

V.

It has been decided by the Secretary of War that the private
11 horse in question was reasonable, useful, necessary, and proper
for the plaintiff to have had in his possession while in quarters,
engaged in the public service, in line of duty.

VI.

The value of said private horse was \$200.

Conclusion of Law.

Upon the foregoing facts the court heretofore concluded that the plaintiff therein was entitled to recover judgment against the United States in the sum of \$200. It was therefore adjudged and ordered by the court that the plaintiff recover of and from the United States the sum of two hundred dollars (200).

See opinion in the case of Andrews et al. v. The United States, 52 C. Cls. 373.

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VII. Judgment of the Court.

In the Court of Claims.

No. 32586.

CONRAD S. BABCOCK

v.

THE UNITED STATES.

At a Court of Claims held in the City of Washington on the 21st day of January, A. D., 1918, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that Conrad S. Babcock, as aforesaid, shall have and recover of and from the defendants, The United States, the sum of Two hundred dollars (\$200).

By THE COURT.

13 *VIII. Defendants' Application for and Allowance of an Appeal.*

From the judgment rendered in the above-entitled cause on the 18th day of March, 1918, in favor of claimant, the defendants, by their Attorney General, on the 23d day of April, 1918, make application for, and give notice of, an appeal to the Supreme Court of the United States.

HUSTON THOMPSON,
Assistant Attorney General.

Filed April 23, 1918.

Ordered: That the above appeal be allowed as prayed for.

EDWARD K. CAMPBELL,
Chief Justice.

October 21, 1918.

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In the Court of Claims.

No. 32586.

CONRAD S. BABCOCK

v.

THE UNITED STATES.

I, Samuel A. Putman, chief clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-

entitled cause; of the argument and submission of same; of the findings of fact and conclusion of law; of the judgment of the court; of the application for, and the allowance of, appeal to the Supreme Court of the United States.

In Testimony Whereof I have hereunto affixed the seal of said court at Washington City this 21st day of October, 1918.

[Seal Court of Claims.]

SAML. A. PUTMAN,
Chief Clerk Court of Claims.

Endorsed on cover: File No. 26794. Court of Claims. Term No. 708. The United States, appellant, vs. Conrad S. Babcock. Filed October 22d, 1918. File No. 26794.

TRANSCRIPT OF RECORD.

THE UNITED STATES COURT OF CLAIMS,
OCTOBER TERM, 1918.

No. 815.

THE UNITED STATES, APPELLANT,

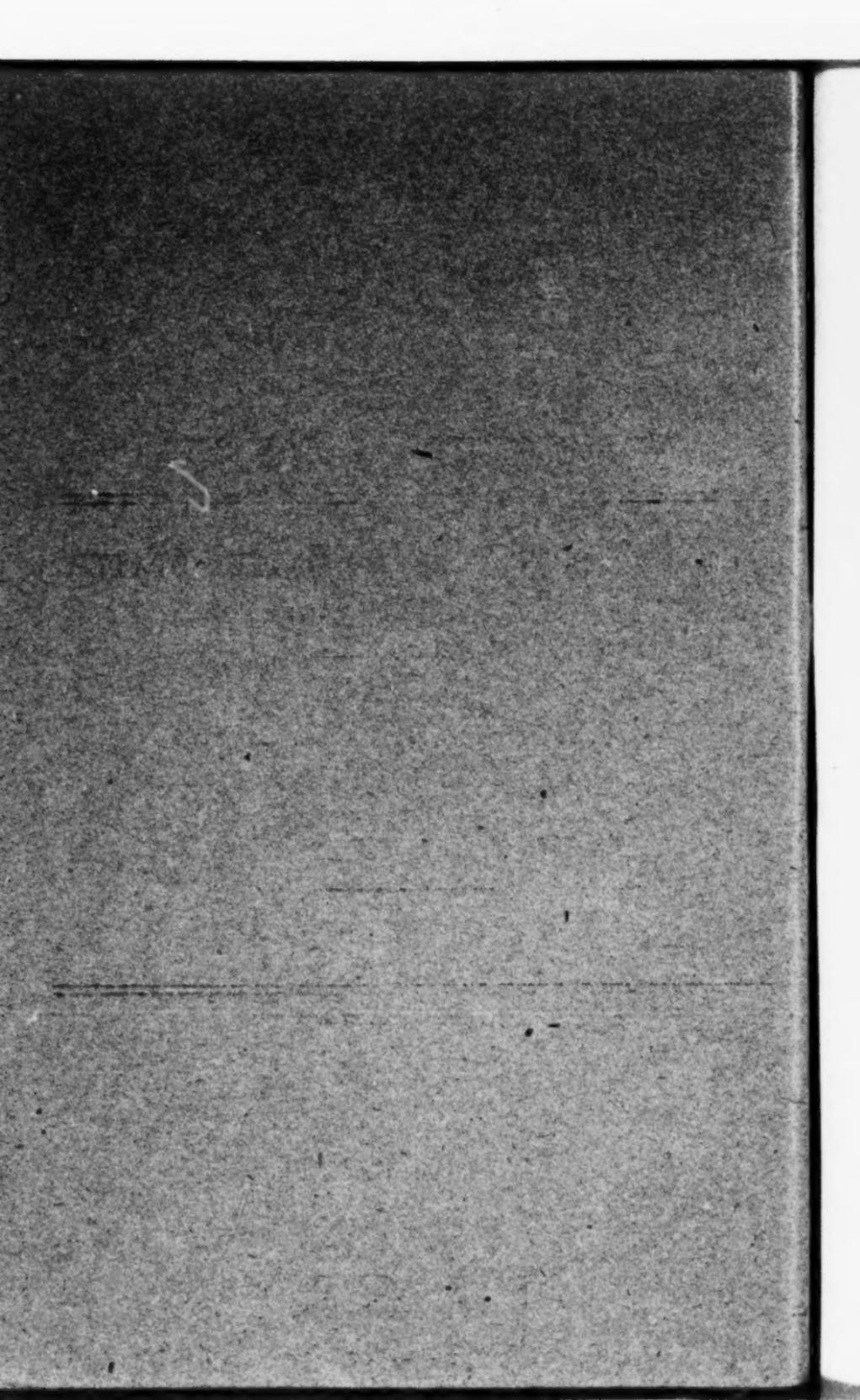
vs.

HERBERT D. HAYDEN

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 24, 1919

(27001)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 915.

THE UNITED STATES, APPELLANT,

vs.

HERBERT B. HAYDEN.

APPEAL FROM THE COURT OF CLAIMS.

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UNITED STATES VS. HERBERT B. HAYDEN.

Number lost.	Items.	Actual value.	Certified value.
4 pajamas	-----	\$6.00	\$6.00
1 pillow	-----	2.00	2.00
1 razor	-----	2.50	2.50
1 saddle—whippey	-----	42.00	42.00
1 pr. shoulder straps	-----	4.50	4.50
2 pr. shoulder knots	-----	24.00	20.00
2 pr. spurs	-----	3.00	3.00
1 pr. stirrups	-----	2.50	2.50
1 shirt, O. D. (to order)	-----	5.40	3.00
1 saber	-----	3.00	3.00
8 shirts	-----	24.00	16.00
6 stocks—uniform	-----	1.50	1.50
4 shirts—dress	-----	8.00	8.00
4 sheets	-----	2.00	2.00
24 prs. socks	-----	12.00	12.00
1 trunk	-----	30.00	15.00
4 uniforms, O. D. & khaki	-----	89.00	50.00
2 uniforms, white	-----	20.00	12.00
12 suits underwear	-----	12.00	12.00
1 watch	-----	9.00	9.00
1 whip—riding (not certified)	-----	5.00	
		449.90	330.00

Civilian property.

1 bicycle (not certified)	-----	\$25.00
1 pr. breeches "	-----	20.00
1 hat—Panama "	-----	10.00
1 hat—straw "	-----	2.50
1 pr. skates "	-----	5.00
6 neckties "	-----	12.00
1 suit "	-----	10.00

The numbers of the various items lost are stated in the first column. The true and actual value of the property lost is stated in the third column. The number of the different items certified by the Secretary of War to be reasonable, useful, necessary, and proper for the claimant to have is the same as the number claimed, except on three items, where the number certified by the Secretary is stated in parentheses after the item. The valuation placed upon the several items of property by the Secretary is stated in the fourth, or last, column. The last items, as noted, have not been certified to be reasonable, useful, necessary and proper.

3. A claim for said property was duly presented to the Auditor for the War Department, and the Secretary of War has furnished said auditor a certificate, as required by the statute, showing which of the articles lost were reasonable, useful, necessary, and proper for the claimant while in quarters engaged in the public service and in

the line of duty. All of the items claimed are so certified, except as indicated in the foregoing paragraph. The said claim was presented to the Auditor for the War Department within two years from the date of the loss, and under date of June 25, 1917, was examined and disallowed by certificate 442581 for the following reasons:

“As the property was not lost or destroyed by being shipped
4 on an unseaworthy vessel, nor by reason of the claimant giving
his attention to saving property belonging to the United States,
no reimbursement can be made.”

From this decision the claimant appealed to the Comptroller of the Treasury who, under date of July 3, 1917, affirmed the auditor's action on the authority of the decision of the comptroller rendered May 7, 1917, in the case of Lieutenant Colonel Hugh J. Gallagher, which decision was to the effect that paragraph first in the act of March 3, 1885, was to be read as a proviso to the second and third paragraphs, and that there could be no recovery for losses under any circumstances other than those enumerated in paragraphs second and third.

4. The claimant claims reimbursement from the United States for the value of the property so lost or destroyed under the provisions of the following act of Congress approved March 3, 1885, 23 Stat., 350:

“That the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to examine into, ascertain, and determine the value of the private property belonging to officers and enlisted men in the military service of the United States which has been, or may hereafter be, lost or destroyed in the military service under the following circumstances:

“First. When such loss or destruction was without fault or negligence on the part of the claimant.

“Second. Where the private property so lost or destroyed was shipped on board an unseaworthy vessel by order of any officer authorized to give such order or direct such shipment.

“Third. Where it appears that the loss or destruction of the private property of the claimant was in consequence of his having given his attention to the saving of the property belonging to the United States which was in danger at the same time and under similar circumstances. And the amount of such loss so ascertained and
5 determined shall be paid out of any money in the Treasury not otherwise appropriated, and shall be in full for all such loss or damage:

“Provided, That any claim which shall be presented and acted on under authority of this act shall be held as finally determined, and shall never thereafter be reopened or considered:

“And provided further, That this act shall not apply to losses sustained in time of war or hostilities with Indians:

“And provided further, That the liability of the Government under this act shall be limited to such articles of personal property as the Secretary of War, in his discretion, shall decide to be reasonable, useful, necessary, and proper for such officer or soldier while in quarters engaged in the public service in the line of duty:

"And provided further, That all claims now existing shall be presented within two years, and not after, from the passage of this act; and all such claims hereafter arising be presented within two years from the occurrence of the loss or destruction."

The claimant maintains that he is entitled to the actual value of those items of property which the Secretary of War has certified to the Auditor for the War Department as being reasonable, useful, necessary, and proper for him to have, and he therefore claims the actual value of said items, which amount to \$425.07.

No other action has been had on said claim in Congress or by any of the departments; no person other than the claimant is the owner thereof or interested therein; no assignment or transfer of this claim or of any part thereof or interest therein has been made; the claimant is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets; the claimant has at all times borne true allegiance to the Government of the
6 United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government. The claimant is a citizen of the United States. And the claimant claims \$425.07.

KING & KING,
Attorneys for Claimant.

STATE OF VIRGINIA,

City of Norfolk, ss:

Herbert B. Hayden, being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

HERBERT B. HAYDEN.

Subscribed and sworn to before me this 28th day of July, 1917.

[SEAL.]

SIDNEY L. NUSBAUM,
Notary Public.

7

II. *General Traverse. Filed October 8, 1917.*

Court of Claims.

HERBERT B. HAYDEN	vs.	No. 33832.
THE UNITED STATES.		

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

III. *Argument and submission of case.*

On December 10 1918, this case was argued and submitted on merits by Mr. George A. King for the claimant and Mr. John E. Hoover for the defendants.

8 IV. *Findings of fact, conclusion of law. Entered December 16, 1918.*

This case having been heard by the Court of Claims the court, upon the evidence, makes the following

Findings of fact.

I.

The plaintiff, Herbert B. Hayden, was at the time covered by this claim a first lieutenant, Battery C, 4th Field Artillery, and was stationed at Texas City, Tex., on duty with his regiment.

The camp was on low ground peculiarly exposed to inundation. August 16, 1915, a hurricane of exceptional violence and duration broke out on the coast of Texas, lasting through that day and the 17th and the 18th, driving the water from the bay up over the camp and totally wrecking and destroying all the tents as well as the wooden structures belonging to the Government. During said hurricane the plaintiff exerted himself to the utmost of his ability to save Government property, to save the lives of other officers and of their families, and to secure his own property from destruction. Notwithstanding all these efforts his tent and shack were swept away and all his personal property therein was destroyed or swept away by the waters. The loss was without fault or negligence on the part of plaintiff.

9

II.

Within two years of the occurrence of the loss or destruction of plaintiff's property he presented his claim as required by paragraph 726, Army Regulations, 1913, through military channels, accompanied by the report of a board of officers showing the full circumstances of the loss, and the same was forwarded by the Secretary of War to the Auditor for the War Department June 15, 1917.

July 19, 1917, the Secretary of War certified "that the following articles were reasonable, useful, necessary, and proper for First Lieut. (now Captain) Herbert B. Hayden, 4th Field Artillery, to have while in quarters engaged in the public service, in the line of duty, and that the price here set opposite each is fair and reasonable":

2 prs. boots.....	\$20.00
1 belt, saber.....	3.50
1 pr. boots, polo pony.....	3.00
4 sets buttons, bronze and gilt.....	3.00
1 pr. breeches, O. D.....	8.00
1 pr. breeches, white.....	4.00
1 cap, O. D.....	4.00
1 cap, white.....	3.50

1 cord, campaign hat.....	\$1.00
6 cloths, saddle.....	1.50
2 prs. gloves.....	3.00
1 hat, service.....	2.00
1 helmet, polo.....	3.00
1 kit, toilet.....	3.50
1 mess jacket, white, complete.....	15.00
2 mallets, polo.....	3.50
3 neckties, dress.....	1.50
1 overcoat, O. D.....	21.00
4 pajamas.....	6.00
1 pillow.....	2.00
1 razor.....	2.50
10 1 saddle, whippey.....	42.00
1 pr. shoulder straps.....	4.50
2 pr. shoulder knots.....	20.00
2 pr. spurs.....	3.00
1 pr. stirrups.....	2.50
1 shirt, O. D. (to order).....	3.00
1 saber.....	3.00
8 shirts.....	16.00
6 stocks, uniform.....	1.50
4 shirts, dress.....	8.00
4 sheets.....	2.00
24 prs. socks.....	12.00
1 trunk.....	15.00
4 uniforms, O. D. and khaki.....	50.00
2 uniforms, white.....	15.00
12 suits underwear.....	12.00
1 watch.....	9.00
 Total.....	 333.00

The value as so certified aggregates \$333, which value the court finds to be fair and reasonable and not in excess of the true value of the articles at the time and place of loss.

The Auditor for the War Department disallowed the claim June 23, 1917, and the disallowance was affirmed by the Comptroller of the Treasury July 3, 1917.

Conclusion of law.

Upon the foregoing findings of fact, the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum of \$333. It is therefore adjudged and ordered by the court that the plaintiff recover of and from the United States the sum of three hundred and thirty-three dollars (\$333). See cases of Newcomber, 51 C. Cls., 408, and Andrews, 52 C. Cls., 373. Also XX Comp. Dec., 420.

V. Judgment of the court.

At a Court of Claims held in the city of Washington on the sixteenth day of December, A. D. 1918, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the claimant, Herbert B. Hayden, as aforesaid, is entitled to recover, and shall have and recover, of and from the defendants, The United States, the sum of three hundred and thirty-three dollars (\$333.00).

BY THE COURT.

VI. Defendants' application for and allowance of an appeal.

From the judgment rendered in the above-entitled cause on the 16th day of December, 1918, in favor of claimant, the defendants, by their Attorney General, on the 27th day of February, 1919, make application for and give notice of an appeal to the Supreme Court of the United States.

WILLIAM L. FRIERSON,
Assistant Attorney General.

Filed February 27, 1919.

Ordered: That the above appeal be allowed as prayed for.
March 3, 1919.

BY THE COURT.

Court of Claims.

No. 33832.

HERBERT B. HAYDEN

v.

THE UNITED STATES.

I, Sam'l A. Putman, chief clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the argument and submission of the case, of the findings of fact and conclusion of law, of the judgment of the court, of the application of the defendants for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this fourth day of March, A. D. 1919.

[SEAL.]

SAM'L A. PUTMAN,
Chief Clerk Court of Claims.

(Endorsed on cover:) File No. 27001. Court of Claims. Term No. 915. The United States, appellant, vs. Herbert B. Hayden. Filed March 14th, 1919. File No. 27001.